

REMARKS

Applicants respectfully request reconsideration of the newly presented rejections of the claims of the instant application in view of the following remarks. The outstanding Office Action is labeled as notice of non-compliant response. The basis for the assertion of non-compliance is the failure to respond to the obviousness-type double patenting rejections over U.S. Patent Application No. 10/458,651 ("the '651 application").

Applicants respectfully traverse this rejection at least because the Examiner has failed to set forth a proper non-statutory obviousness-type double patenting rejection in view of the requirement to engage in a two-way double patenting analysis. The present application has a PCT filing date of June 3, 2003, which is earlier than the June 11, 2003, filing date of the '651 application. "Under these circumstances, a double patenting obviousness rejection will only be sustained if the application claims are not patentably distinct from the prior [application] claims, and the prior [application] claims are also not patentably distinct from the application claims. This 'two-way' analysis is necessary because a later-filed improvement patent may issue before an earlier-filed basic invention." In re Goodman, 11 F.3d 1046, 1053 (Fed. Cir. 1993).

In view of the abovementioned remarks, Applicants respectfully submit that a full substantive response to this rejection is presented, and the present application is believed to be in condition for allowance. The Examiner is invited to contact the undersigned counsel in order to further the prosecution of this application in any way.

Respectfully submitted,

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